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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,165	04/16/2004	David Carroll Challener	RPS920030239US2 (114)	2667

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EXAMINER	
PARTHASARATHY, PRAMILA	
ART UNIT	**PAPER NUMBER**
2136	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/827,165	CHALLENER ET AL.	
	Examiner	Art Unit	
	PRAMILA PARTHASARATHY	2136	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the communication filed on 06/04/2008. Claims 1 – 33 are currently pending.

Response to Arguments

2. Applicant's argument lacks any remarks with respect to copending application 10/848,796 obviousness-type double patenting rejection, but has not filed Terminal Disclaimer to overcome the rejection. Examiner respectfully requests filing of Terminal disclaimer.

3. With respect to prior art rejection, Applicant primarily argues that instant claim limitation "fix server" is not taught by Kouznetsov. Examiner respectfully submits that: the cited portion teaches updating virus signature file by the server 114 (coupled to a database equipped with virus signatures/anti-virus policy updates that are distributed to client computers) correspond to the functionalities of "fix server", namely delivering/downloading software fixes such as patches, anti-viruses, etc. (as disclosed in instant specification [0034]). Further, while the elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 USC 102 rejection. See MPEP 2131.01.

Kouznetsov further discloses a separate update command for automatic updates of anti-virus scanning software when such update requests are processed. Applicant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art if prior art has the capability to do so perform (See MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987)).

Examiner herby maintains the prior art rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 – 33 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended claims 1 – 36 of copending application 10/848,796. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant case, all elements of claims 1 – 33 correspond to the amended claims of 1 – 36 of the copending application, except in the instant claims the elements "configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer;" and "receiving from the fix server the software fix" are referred in the copending claims as "establishing an exclusive network connection between the client and the fix server" and "receiving the software fix from the fix server". Copending claims

recite "installing the software fix on the client" and "wherein said reception and installation are automatically forced on the client without user intervention" which encompasses the instant application claims "wherein the software fix is automatically forced on the client computer to be received and applied on the client without a user intervention". Thus copending application claims anticipates the instant claims.

Claims of the instant application are anticipated by patent claims in that the patent claims contains all the limitations of the instant application. Claims of the instant application therefore is not patentably distinct from the earlier patent claims and as such are unpatentable for obvious-type double patenting *(In re Goodman (CAFC) 29 USPQ2d 2010 (12/3/1993).*

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 – 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Kouznetsov et al. (US Patent 6,892,241).

6. As per Claims 1, 18, 26, 31 and 33, Kouznetsov teaches “configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer; and

receiving from the fix server the software fix, wherein the client computer communicates only with the fix server when a determination is made that the client computer has not previously received the software fix” (Column 2 lines 15 – 54), wherein “conditionally include a notice to the user .. such notice may include that the user is required to reinstall the antivirus scanning software. Further, the notice may indicate that the user is required to reactivate the anti-virus scanning software" and "Optionally, the updating of the anti-virus scanning software may include sending an update request to a server utilizing the network and receiving an update from the server". Furthermore, Kouznetsov teaches **server 114** coupled to a network 108, the server(s) 114 may include any type of computing device/groupware. Coupled to each server 114 is a plurality of **client computers 116**. A client agent 120 coupled to one of the client computers 117. The client computers 117 may also be equipped with a scanner 121 including anti-virus scanning software. Also provided is a database 122 that is coupled to an associated server (i.e., server 114). Such database 122 is equipped with virus signature updates that may be selectively distributed to the client computers 117 for updating the scanner 121.

The dependent claims are rejected at least by virtue of their dependency on the dependent claim.

7. As per Claims 6, 7, 10 and 30, Kouznetsov teaches “a fix detector which discerns an offer for a software fix from a fix server;

an isolator which is operatively coupled to said isolator and which transfers the software fix from the fix server, and

a boot strap which is operatively coupled to said downloader and which reboots the client computer after the software fix has been downloaded and executed; wherein the client computer is reconnected to a network without restrictions after the software fix is loaded and executed in the client computer" (Column 5 line 43 – Column 6 line 53).

8. As per Claims 2, 3, 5, 11, 12, 13, 15, 16, 17 and 19, Kouznetsov teaches "wherein the software fix is automatically forced on the client computer to be received and applied on the client computer without a user intervention" and "wherein the service processor includes an agent for detecting the offer for the software fix" (Column 2 line 65 – Column 3 line 8 and Column 6 lines 25 – 53).

9. As per Claim 4, Kouznetsov teaches "waking up the client computer with a Wake-On-LAN (WOL) signal, the WOL signal being included in a packet from the fix server, the packet from the fix server including the address of the fix server" (Column 6 lines 25 – 53).

10. As per Claim 8, Kouznetsov teaches "utilizing a service processor in the client computer to reconfigure a Network Interface Card (NIC) driver, wherein the NIC is configured to communicate only with the fix server to receive the software fix" (Column 5 line 43 – Column 6 line 53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9, 14, 20 – 30 and 31 – 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouznetsov (US Patent 6,892,241) as applied to claims 1 and 11 above, and further in view of Ho et al. (US Patent 7,188,369).

11. As per Claims 9 and 14, Kouznetsov teaches “determining whether the client computer has any of a virtual machine manager, a primary operating system, a secondary operating system, and a service processor, and upon said determination, utilizing the virtual machine manager to control the network interface if the client computer has a virtual machine manager, or else utilizing the service processor to control the network interface if the client computer has a service processor, or else utilizing the secondary operating system to control the network interface if the client computer has a secondary operating system, or else utilizing the primary operating system to control the network interface” (Column 4 line 5 – Column 5 line 51). Kouznetsov does not explicitly disclose a virtual machine manager which virtualizes the hardware interface. However, Ho discloses "a virtual scanning processor having a plug-in functionalities having a plurality of internal instructions, a computer virus signature database **201** storing a plurality of computer virus signatures" and “The virtual scanning processor 101 is provided at the application program (AP) level 302. The antivirus scanning module can also be provided by other virtual machine at the AP level” (See Ho Column 5 line 25 – Column 6 line 22).

It would have been obvious to one of ordinary skill in the art to combining Kouznetsov with Ho because security and device independence (virtual machine) can run regardless of hardware and software underlying the system, the anti-virus program can be updated, the machine can be re-booted without any disadvantage to the computer/operating system.

12. As per Claims 20, 26 and 31 – 32, Kouznetsov teaches “configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer; and

receiving from the fix server the software fix, wherein the client computer communicates only with the fix server when a determination is made that the client computer has not previously received the software fix” (Column 2 lines 15 – 54), wherein “conditionally include a notice to the user .. such notice may include that the user is required to reinstall the antivirus scanning software. Further, the notice may indicate that the user is required to reactivate the anti-virus scanning software" and "Optionally, the updating of the anti-virus scanning software may include sending an update request to a server utilizing the network and receiving an update from the server". Furthermore, Kouznetsov teaches **server 114** coupled to a network 108, the server(s) 114 may include any type of computing device/groupware. Coupled to each server 114 is a plurality of **client computers 116**. A client agent 120 coupled to one of the client computers 117. The client computers 117 may also be equipped with a scanner 121 including anti-virus scanning software. Also provided is a database 122 that is coupled to an associated server (i.e., server 114). Such database 122 is equipped with virus signature updates that may be selectively distributed to the client computers 117 for updating the scanner 121. Kouznetsov does not explicitly disclose a virtual machine manager which virtualizes the hardware interface. However, Ho discloses "a virtual scanning processor having a plug-in functionalities having a plurality of internal instructions, a computer virus signature database **201** storing a plurality of computer virus signatures" and “The virtual scanning processor 101 is provided at the application program (AP) level 302. The antivirus scanning module can also be provided by other virtual machine at the AP level” (See Ho Column 5 line 25 – Column 6 line 22).

It would have been obvious to one of ordinary skill in the art to combining Kouznetsov with Ho because security and device independence (virtual machine) can run regardless of hardware and software underlying the system, the anti-virus program can be updated, the machine can be re-booted without any disadvantage to the computer/operating system.

The dependent claims are rejected at least by virtue of their dependency on the dependent claim.

13. As per Claims 21, 22, 23, 27, 28 and 32, Kouznetsov teaches "upon receiving the software fix from the fix server, executing the software fix directly from the virtual machine manager" (Column 2 line 65 – Column 3 line 8 and Column 6 lines 25 – 53).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pramila Parthasarathy whose telephone number is 571-272-3866. The examiner can normally be reached on 8:00a.m. to 5:00p.m.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on 571-272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pramila Parthasarathy/
Primary Examiner, Art Unit 2136
September 15, 2008